



[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF-022]

**Notice of Petition for Waiver of Sanyo E&E Corporation from the Department of Energy
Residential Refrigerator and Refrigerator-Freezer Test Procedure**

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver and request for comments.

SUMMARY: This notice announces receipt of and publishes the Sanyo E&E Corporation (Sanyo) petition for waiver (hereafter, “petition”) from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. The waiver request pertains to the hybrid wine chiller/beverage center basic models set forth in Sanyo’s petition. In its petition, Sanyo provides an alternate test procedure to test the wine chiller compartment at 55 °F instead of the prescribed temperature of 38 °F. DOE solicits comments, data, and information concerning Sanyo’s petition and the suggested alternate test procedure.

DATES: DOE will accept comments, data, and information with respect to the Sanyo Petition until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by case number “RF-022,” by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: AS_Waiver_Requests@ee.doe.gov Include the case number [Case No. RF-022] in the subject line of the message.
- Mail: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J/1000 Independence Avenue, SW, Washington, DC 20585-0121. Telephone: (202) 586-2945. Please submit one signed original paper copy.
- Hand Delivery/Courier: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L’Enfant Plaza SW, Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L’Enfant Plaza SW, Washington, DC, 20024; (202) 586-2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) this notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings regarding similar refrigerator-freezers. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE-2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-0371. E-mail: Bryan.Berringer@ee.doe.gov.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0103. Telephone: (202) 586-7796. E-mail: Elizabeth.Kohl@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94-163 (42 U.S.C. 6291-6309, as codified, established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the electric refrigerators and refrigerator-freezers that are the focus of this notice.¹ Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure the energy efficiency, energy use, or estimated annual operating costs of a covered product, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for electric refrigerators and electric refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

¹ For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

II. Petition for Waiver of Test Procedure

On June 2, 2011, Sanyo submitted a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, Subpart B, Appendix A1. Sanyo is requesting a waiver with respect to the test procedures for its hybrid models that consist of single-cabinet units with a refrigerated beverage compartment in the top portion and a wine storage compartment in the bottom of the units. DOE issued guidance that clarified the test procedures to be used for hybrid products such as the Sanyo models at issue here:

http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/refrigerator_definiti

[on faq.pdf](#) This guidance specifies that basic models such as the ones Sanyo identifies in its petition, which do not have a separate wine storage compartment with a separate exterior door, are to be tested according to the DOE test procedure in Appendix A1, with the temperatures specified therein. Sanyo asserts that the wine storage compartment cannot be tested at the prescribed temperature of 38 °F, because the minimum compartment temperature is 45 °F. Sanyo submitted an alternate test procedure to account for the energy consumption of its wine chiller/beverage centers. That alternate procedure would test the wine chiller compartment at 55 °F, instead of the prescribed 38 °F. The following basic models are included in Sanyo's petition:

JUB248LB, JUB248RB, JUB248LW, JUB248RW, KBCO24LS, KBCS24LS,
KBCO24RS, KBCS24RS, and MBCM24FW.

DOE makes decisions on waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Sanyo may submit a subsequent petition for waiver for additional models of electric refrigerators and refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that the grant of a waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

We also note that the energy consumption of the basic models detailed in Sanyo's petition suggests that these products, when tested in accordance with the alternate test procedure Sanyo is requesting to use, would appear to use an amount of energy that exceeds the energy conservation standards for the likely product classes that would apply. While this is a separate issue from the merits presented by this petition, DOE notes that should this in fact be the case,

Sanyo would also need to seek exception relief from the applicable standards through the Office of Hearings and Appeals prior to making these products available for sale. The process for seeking such relief, which is authorized under 42 U.S.C. 7194, is detailed at 10 CFR 1003.20-1003.27.

III. Summary and Request for Comments

Through today's notice, DOE announces receipt of Sanyo's petition for waiver from certain parts of the test procedure that applies to residential refrigerators and refrigerator - freezers. DOE is publishing Sanyo's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure to determine the energy consumption of Sanyo's specified hybrid refrigerators.

DOE solicits comments from interested parties on all aspects of the petition. Any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Adam D. Bowser, ARENT FOX LLP, 1050 Connecticut Avenue, NW, Washington, DC 20036-5369, (202) 857-6450. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies to DOE: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on March 27, 2012.

Kathleen B. Hogan
Deputy Assistant Secretary for Energy Efficiency
Energy Efficiency and Renewable Energy

**BEFORE THE
U.S. DEPARTMENT OF ENERGY
Washington, D.C. 20585**

In the Matter of:

SANYO E&E Corp.,
Petitioner

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Case Number: _____

PETITION FOR WAIVER

SANYO E&E Corporation (“SANYO E&E”) respectfully submits this Petition for Waiver (“Petition”) pursuant to 10 C.F.R. § 430.27 on the ground that its hybrid wine chiller/beverage center models (“hybrid model(s)”) listed below contain one or more design characteristics that prevent testing of the basic models according to the test procedures prescribed in 10 C.F.R. § 430, subpart B, appendix A1. Sanyo therefore requests that it be permitted to employ the alternative testing method detailed below, as it is currently impossible to test these hybrid models under the existing test procedures.

1. Description of Applicant

SANYO E&E is part of an international organization with many subsidiaries and affiliates, including in the United States. Further information can be found at <http://www.sanyo.com>. SANYO E&E’s core traditional business has been the production of compact and mid-size refrigerators, freezers, wine storage appliances and other consumer and commercial refrigeration products. SANYO E&E, which is headquartered in San Diego, California, has been designing and selling these consumer and commercial refrigeration products since 1979. Further, SANYO E&E produces products sold not only under the SANYO brand name, but also under multiple other brand names and which are sold in the United States by SANYO E&E’s customers.

2. Background and General Information

SANYO E&E is requesting a waiver with respect to the test procedures for its hybrid models that consist of a combination of a refrigerated “beverage” compartment in the top portion of these single-cabinet units and a wine storage compartment on the bottom of the units, and for which an alternative testing procedure is necessary in order to certify, rate, and sell such models. These hybrid models include the following basic models: JUB248LB, JUB248RB, JUB248LW, JUB248RW, KBCO24LS, KBCS24LS, KBCO24RS, KBCS24RS, and MBCM24FW.

SANYO E&E understands that DOE does not wish to prevent manufacturers from marketing new, innovative products that will enhance consumers’ well being and satisfaction. The market for wine storage products and related hybrid models has seen robust growth over the last few years and is expected to continue expanding for the foreseeable future. Therefore, there is a significant demand and need for these hybrid models. As discussed below, however,

because of their unique design characteristics and temperature specifications, there is no way to certify, rate, and sell these hybrid models under the existing testing procedures, and a waiver is thus necessary.

DOE has now clarified that it considers such hybrid models as covered products. Currently, however, there are no DOE testing procedures specifically tailored to hybrid models. Accordingly, the current testing requirements would not measure energy usage in a manner that truly represents the energy-consumption characteristics of these unique products, and, in fact, as described below, it would be impossible to test these models under the existing testing procedures. As DOE has previously stated, “[f]ully recognizing that product development occurs faster than the test procedure rulemaking process, the Department’s rules permit manufacturers of models not contemplated by the test procedures ... to petition for a test procedure waiver in order to certify, rate, and sell such models.” GC Enforcement Guidance on the Application of Waivers and on the Waiver Process at 2 (rel. Dec. 23, 2010);¹ *see also* DOE FAQ Guidance Regarding Coverage of Wine Chillers, Etc. in the R/F Standard/Test Procedure at 2 (rel. Feb. 10, 2011) (“DOE recognizes the potential disparity in treatment among these hybrid products. As DOE indicated ..., the Department plans to engage in a future rulemaking to more comprehensively address these types of products.”).

Accordingly, SANYO E&E respectfully requests a waiver from the test procedures prescribed in 10 C.F.R. § 430, subpart B, appendix A1 until such time as DOE issues test procedures tailored to the unique product characteristics of these hybrid models, as discussed below.

3. Product Characteristics of SANYO E&E Hybrid Models

As noted above, SANYO E&E’s hybrid models consist of a combination of a refrigerated “beverage” compartment in the top portion of these single-cabinet units and a wine storage compartment on the bottom of the units. Wine connoisseurs recommend an average of 55-57 °F for the long term storage of any kind of wine, and SANYO E&E has designed the wine storage compartments of its hybrid models with this ideal average temperature in mind. But because various types of wines have different ideal drinking temperatures (*e.g.*, some red wines are best served in the mid-sixties, while some white wines are ideally served in the mid-forties), SANYO E&E has designed the wine storage compartments of its hybrid models to operate between a minimum temperature of 45 °F and a maximum temperature of 64 °F. In fact, heaters are used to ensure that the temperature in the wine storage compartment never drops below 45 °F, as wines chilled below this temperature risk becoming crystallized and, therefore, ruined. Currently, however, DOE’s testing procedures contained in 10 C.F.R. § 430, subpart B, appendix A1, mandate that energy consumption be measured when the compartment temperature is set at 38 °F. Based on the design characteristics of its hybrid models noted above, however, SANYO E&E would need a waiver in order to properly “certify, rate, and sell such models,” because the existing test procedures contained in 10 C.F.R. § 430, subpart B, appendix A1, do not contemplate a product that is designed to be incapable of achieving a temperature below 45 °F. In short, testing SANYO E&E’s hybrid models at 38 °F is simply not possible and not representative of the energy consumption characteristics of these models.

¹ Available at http://www.gc.energy.gov/documents/LargeCapacityRCW_guidance_122210.pdf.

Further, the hybrid models will typically have a door-opening usage aligned with household freezers, thus 0.85 is the employed K factor (correction factor). *See* Appendix B1 to Subpart 430, 5.2.1.1, because Subpart 430 does not recognize wine chiller as a category. Thus, the K factor from CAN/CSA 300-08 6.3.1.2 and HRF-1-2007 8.7.2.1.1 is used.

SANYO E&E's hybrid models listed above currently cannot be tested under the existing regulations, without a waiver as sought herein. To evaluate the models in a manner truly representative of their actual energy consumption characteristics, the standard temperature of single wine coolers (55 °F) for the wine storage compartment and the standard temperature (38 °F) for the refrigerated beverage compartment should be used. Therefore, the energy consumption is defined by the higher of the two values calculated by the following two formulas (according to 10 C.F.R. § 430, subpart B, Appendix A1):

Energy consumption of the wine compartment:

$$E_{\text{Wine}} = ET1 + [(ET2 - ET1) \times (55\text{ °F} - TW1) / (TW2 - TW1)] \times 0.85$$

Energy consumption of the refrigerated beverage compartment:

$$E_{\text{Beverage Compartment}} = ET1 + [(ET2 - ET1) \times (38\text{ °F} - TBC1) / (TBC2 - TBC1)].$$

The total adjusted volume of basic model MBCM24FW is 5.75 cubic feet. Using the standard temperature of 55 °F for the wine compartment the annual energy use of the model is 436 kWh/year. According to current DOE standards, this model is classified as a compact refrigerator with automatic defrost without through-the-door ice service.

The total adjusted volume of basic models JUB248LB, JUB248RB, JUB248LW, JUB248RW, KBCO24LS, KBCS24LS, KBCO24RS, KBCS24RS is 5.41 cubic feet. Using the standard temperature of 55 °F for the wine compartment the annual energy use of the model is thus 431 kWh/year. According to current DOE standards, these models are also classified as compact refrigerators with automatic defrost without through-the-door ice service.

4. Manufacturers of Other Basic Models Marketed in the United States Known to Incorporate Similar Design Characteristics

After reviewing publicly available product manuals of comparable hybrid models, SANYO E&E was unable to locate a basic model marketed in the United States that incorporates similar design characteristics and that also would be considered a “covered product” under Section 430.62 of DOE’s rules.²

² SANYO E&E cannot guarantee that its search disclosed every possible competing model, as SANYO E&E ordinarily does not search for and retain this information in the normal course of business, but to the best of SANYO E&E’s knowledge, certain GE hybrid models appear to be the closest substitutes to SANYO E&E’s hybrid models in terms of both functionality and design characteristics. However, GE represents in its product manuals that its hybrid models, specifically, ZDBC240, ZDBT240, ZDBR240, and ZDBI240, do not achieve temperatures below 40 °F and thus would not be considered a covered product under DOE regulations. SANYO E&E is uncertain if GE

If DOE requires any additional information to properly consider this Petition for Waiver, please do not hesitate to contact the undersigned.

Respectfully submitted,

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means that the average temperature of the entire cabinet does not drop below 40 °F, which is the case with all SANYO E&E's hybrid models, or whether GE is representing that no portion of its single-cabinet models can achieve temperatures below 40 °F. Based on this uncertainty, SANYO E&E excluded GE from this section. SANYO E&E's research did not reveal any other basic models that, after review of the design characteristics, were comparable to SANYO E&E's hybrid models.